

REMARKS

Claims 1-44, 46-48, and 56-63 are pending. Claims 19, 23, and 56 are currently amended. Claims 45, and 49-55 were previously cancelled without prejudice. Applicants wish to thank the Examiner for the indication of allowable claims 37-44 and 46-48, and the indication of allowable subject matter in claims 7-12, 25-30, and 58-63. No new matter has been added.

Claim 19 is amended to more particularly point out that alignment assembly comprises a “housing” and “wherein the housing and the guide barrel are monolithic.” Support for this amendment appears, *inter alia*, at paragraph [0080] and Fig. 1 of the specification as-filed. Dependent claim 23 has been amended to better conform to currently amended independent claim 19.

Claim 56 is amended to more particularly point that the location post has a “longitudinal axis” and “wherein the location post is pivotable about the longitudinal axis and in the bone plate recess.” Support for this amendment appears, *inter alia*, at paragraphs [0051] and [0091] and Figs. 3A-3C, and 9-10 of the specification as-filed.

No new matter has been added by these amendments.

Rejections under 35 U.S.C. § 102(b)

Claims 1-6, 13-15, 17-24, 31-33, 35, 36, 56, and 57 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,342,057 to Brace et al. (“Brace”). These rejections should be withdrawn.

Brace describes a remotely aligned surgical drill guide consisting of an alignment assembly 110 having a variable angle block 202 with two alignment drill tubes 134, 136, wherein the block 202 is variably arranged at a variety of angulations relative to bushing 206 via teeth 320. “Preferably variable angle block 202 is free to move over a range of about 20° in a single plane....Notably, a surgeon may reset the angulation of the variable angle block 202 after drilling or tapping each hole and/or inserting each bone screw.” (Brace at 12:27-32). This is beneficial, because it “permits the surgeon the freedom to vary the angulation for drilling each hole and insertion of each screw.” (*Id.* at 12:32-36).

Independent claim 1 recites a drill guide having an alignment assembly, “wherein the guide barrel is not pivotable relative to the alignment assembly.” Brace is inapposite, as variable angle block 202 having drill tubes 134, 136 is designed to be variably angulated, and therefore pivotable, relative to bushing 206. Examiner asserts, however, that because “the device of Brace et al. may be locked at a particular angle,” Brace satisfies the

limitation that “the guide barrel is not pivotable relative to the alignment assembly.” (Office Action mailed 7/25/06 at 6). Examiner previously made an equivalent argument with regards to U.S. Patent No. 5,669,915 to Caspar et al. (“Caspar”), stating that because the location post of Caspar “is also capable of being retained so as not to pivot,” that Caspar anticipated claim 1. (Final Rejection mailed September 22, 2005 at 2). This rejection was withdrawn during the Pre-Appeal process. (*See* Applicants’ arguments at Pre-Appeal Brief Conference Request dated December 20, 2005 at 3). Examiner is making the same argument with regard to Brace — that because the Brace location post *can* be restrained, that it is not pivotable. This argument fails now, as it failed regarding Caspar. The act of temporarily restraining the Brace location post does not alter its underlying pivotable relationship with the guide barrel. Thus, Brace fails to describe each and every element of claim 1. Applicants therefore submit that the rejection of independent claim 1, along with the rejections of dependent claims 2-6, 13-15, and 17-18, should be withdrawn.

Independent claim 19 recites a drill guide and an alignment assembly having a housing, “wherein the housing and the guide barrel are monolithic.” In contrast, Brace describes drill tubes 134, 136 separate and distinct from bushing 206 (*see* Brace at Figs. 8, 16). Examiner appears to agree, as independent claims 37 and 46 (allowed) similarly contain this recitation. Thus, Brace fails to describe each and every element of claim 19. Applicants therefore submit that the rejection of independent claim 19, along with the rejections of dependent claims 20-24, 31-33, and 35-36, should be withdrawn.

Independent claim 56 recites a drill guide having a location post having a “longitudinal axis” and “wherein the location post is pivotable about the longitudinal axis and in the bone plate recess to allow the guide barrel to be selectively aligned with the first and second fastener holes.” In contrast, Brace describes a bushing 206 having a neck and rim that are not pivotable about the longitudinal axis of the bushing 206 in a bone plate recess. Instead, Brace discloses a bushing having a neck and rim shaped and designed to be rotatably fixed with a bone plate recess once in the recess. (*See* Brace at 8:53-9:5, Fig. 8). Notable, Brace teaches that it is preferable to have the neck of bushing 206 “abut the wall of the locking bone plate slot...[so that] the drill guide assembly can be secured to the plate 254, restricting relative movement.” (*Id.* at 9:34-41). Thus, Brace fails to describe each and every element of claim 56. Applicants therefore submit that the rejection of independent claim 56, along with the rejection of dependent claim 57, should be withdrawn.

Rejections under 35 U.S.C. § 103(a)

Claims 16, 19-24, and 31-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brace. These rejections should be withdrawn. There is no motivation, teaching, or suggestion to modify Brace to overcome its deficiencies with regards to independent claim 1 (upon which claim 16 depends) and independent claim 19 (upon which claims 20-24, and 31-36 depend). Thus, Brace fails to teach, suggest, or describe each and every element of claims 16, 19-24, and 31-36.

CONCLUSION

Claims 1-44, 46-48, and 56-63 are believed to be in condition for allowance. Should Examiner not agree with any of Applicants' positions or arguments herein, a telephonic or personal interview is respectfully requested to discuss and resolve any remaining issues.

No fee is believed due for this response. If any fee(s) are due at this time, please charge such fee(s) to Jones Day Deposit Account No. 503013.

Respectfully submitted,

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